UNITED
NATIONS

C C P R

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/79/Add.42
10 November 1994

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Comments of the Human Rights Committee

Nepal

1. The Committee considered the initial report of Nepal (CCPR/C/74/Add.2) at its 1359th and 1363th meetings, held on 17 and 19 October 1994, and adopted[1] the following comments:

A. Introduction

2. The Committee welcomes the initial report (CCPR/C/74/Add.2) and the core document (HRI/CORE/1/Add.42) of Nepal and expressed its appreciation to the State party for the opening of a constructive dialogue. The Committee regrets, however, that the information provided in the report was in many respects incomplete and did not follow the Committee's guidelines for the preparation of initial reports (CCPR/C/5/Rev.1). The lack of information on factors and difficulties impeding the implementation of the Covenant prevented the Committee from gaining a clear idea of the real human rights situation in the country.

3. The Committee expresses its appreciation to the State party for taking part in the dialogue and for responding to the questions raised by members of the Committee. The valuable information provided orally supplemented to a certain extent the report, thereby providing a sound basis for a frank and fruitful dialogue between the Committee and the State party. It, however, regrets that the delegation could not include representatives of the various Ministries concerned with the implementation of the Covenant, in particular of the Ministry of Justice.

[1] At the 1382nd meeting, held on 2 November 1994.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee recognizes that Nepal is emerging from a long period of isolation, and that the remnants of authoritarian rule have not yet been overcome. Steps remain to be taken in engaging, consolidating and developing democratic institutions for better implementation of the Covenant. Economic depression, extreme poverty and widespread illiteracy constitute obstacles to the effective implementation of the Covenant.

C. Positive aspects

5. The Committee welcomes the efforts undertaken by the State party to establish democratic institutions and multipartism as well as its declared commitment to the rule of law and the independence of the judiciary. It takes note, in particular, of the adoption of a new Constitution which provides the basis for a parliamentary system of government based on multi-party democracy as well as for an independent Supreme Court. The right of citizens to petition the Supreme Court to challenge laws which violate human rights and the use of this right is particularly welcomed. The Committee also notes with satisfaction that Nepal has recently acceded to a number of international human rights instruments, including the first Optional Protocol to the Covenant.

D. Principal subjects of concern

6. The Committee notes that the status of the Covenant within the legal system is unclear and that the necessary steps to adopt legislative and other measures necessary to give effect to the rights recognized in the Covenant have not yet been taken. Furthermore, a significant gap exists between provisions of the Constitution and other legal norms on the one hand, and their application in practice, on the other. Accordingly, there is a need to clearly define the place of the Covenant within the Nepalese legal system to ensure that domestic law are applied in conformity with the provisions of the Covenant and that the latter can be invoked before the courts and applied by the other authorities concerned. The lack of publicity given to the provisions of the Covenant and the Optional Protocol is also a matter of concern. Since provisions of the Constitution seem to provide rights and freedoms to citizens only, the Committee draws the State party's attention to its obligations to ensure to all individuals within its jurisdiction the rights and freedoms recognized in the Covenant.

7. The Committee notes that the non-discrimination clauses in article 11 of the Constitution do not cover all the grounds provided for in articles 2 and 26 of the Covenant. It is particularly disturbed by the fact that the principle of non-discrimination and equality of rights suffers serious violations in practice and deplores inadequacies in the implementation of the prohibition of the system of castes. The persistence of practices of debt bondage, trafficking in women, child labour, and imprisonment on the ground of inability to fulfil a contractual liability constitute clear violations of several provisions of the Covenant.

8. The Committee expresses its concern over the situation of women who, despite some advances, continue to be de jure or de facto the object of discrimination as regards marriage, inheritance, transmission of citizenship to children, divorce, education, protection against violence, criminal justice, and wages. The Committee is also concerned that the average life expectancy of women is shorter than that of men. It regrets the high proportion of women prisoners sentenced for offences resulting from unwanted pregnancies.

9. The Committee deplores the lack of clarity of the legal provisions governing the introduction and administration of a state of emergency, particularly article 115 of the Constitution, which would permit derogations contravening the State party's obligations under article 4, paragraph 2, of the Covenant.

10. The Committee is deeply concerned with the cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces during the period under review which have been brought to its attention. It deplores that those violations were not followed by proper inquiries or investigations, that the perpetrators of such acts were neither brought to justice nor punished, and that the victims or their families were not compensated. It regrets that the draft bills against torture and ill-treatment of the person as well as on the compensation of victims of torture, have not yet been adopted. Moreover, the quasi judicial authority of the Chief District Officer and the insufficient protection of the independence of the judiciary undermines the efforts aimed at preventing the occurrence of similar acts.

11. The Committee notes with concern the excessive restrictions on the right to freedom of expression and information and the restrictions which apply to the manifestation of religion and to change of religion.

E. Suggestions and recommendations

12. The Committee recommends that the legislative reforms presently under way in Nepal be expanded and intensified in order to ensure that all relevant legislation be in conformity with the Covenant. It emphasizes the need for the provisions of the Covenant to be fully incorporated into domestic law and made enforceable by domestic courts. Necessary steps should be taken to give effect to the rights recognized in the Covenant. The text of the Covenant and the first Optional Protocol should be translated into all languages spoken in Nepal, widely publicized and included in school curricula, to ensure that the provisions of these instruments are widely known to members of the legal profession, the judiciary and law enforcement officials, as well as to the general public. The legal profession and non-governmental organizations should be encouraged to contribute to the process of reform.

13. The Committee stresses the need to take appropriate action in order to ensure the effective application of articles 2 and 3 of the Covenant, particularly through the adoption of administrative and educational measures designed to eliminate traditional practices and customs detrimental to the well-being and status of women and vulnerable groups of the Nepalese society.

14. The Committee recommends that appropriate information be gathered and educational measures be taken to eradicate practices of debt bondage, trafficking in women and child labour. Prison reforms now envisaged should be accelerated.

15. The Committee recommends that the authorities adopt legislation to bring its domestic legal regime into harmony with its obligations under article 4, paragraph 2, of the Covenant.

16. The Committee urges the Government of Nepal to take all necessary measures to prevent extra-judicial and summary executions, enforced or involuntary disappearances, torture and degrading treatment and illegal or arbitrary detention. The Committee recommends that all such cases be systematically investigated in order to bring those suspected of having committed such acts before the courts and that the victims be compensated.

17. The Committee recommends that Nepal studies measures directed towards the abolition of the death penalty, and give consideration to accession to the Second Optional Protocol.

18. The Committee also recommends that necessary measures be taken by the Government to give effect to the separation of executive and judicial functions and to ensure the full independence and proper functioning of the judiciary. The texts of the draft bills against torture and ill-treatment of the person as well as on compensation of victims of torture should be brought into line with the provisions of the Covenant and adopted as soon as possible. Specifically targeted training courses on human rights for law enforcement

officials, members of the judiciary, members of the police and security forces should be organized.

19. The Committee calls upon the state party to prepare its second periodic report in compliance with the Committee's guidelines for the preparation of State party reports (CCPR/20/Rev.1). The report should in particular include detailed information on the specific laws applicable to each right protected under the Covenant and the extent to which each right is enjoyed in practice, and refer to specific factors and difficulties that might impede its application. In undertaking this obligation, the State party may avail itself of the Advisory Services and Technical Assistance Programme of the United Nations Centre for Human Rights.

UNITED NATIONS

C C P R

International Covenant on Civil and Political Rights

Distr.
GENERAL

CCPR/C/79/Add.43
23 November 1994

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Fifty-second session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Comments of the Committee

Tunisia

1. The Committee considered the fourth periodic report of Tunisia (CCPR/C/84/Add.1) at its 1360th to 1362nd meetings, held on 18 and 19 October 1994, and adopted[1] the following comments.

A Introduction

2. The Committee welcomes the timely submission of the fourth periodic report of Tunisia and appreciates the promptness with which the State party continues to meet its reporting obligations under the Covenant. The report contains useful and detailed information on measures taken by the Government, particularly with regard to legislative reform and institutional developments affecting the application of the Covenant. However, the Committee notes that the report does not contain sufficient information on factors and difficulties encountered in the implementation of the Covenant.

3. The Committee also welcomes the presence, during the examination of the report, of a high-level and competent delegation of experts knowledgeable in the implementation of the Covenant in Tunisia. The delegation provided much useful and updated information which facilitated a constructive dialogue with the State party.

[1] Adopted at its 1383rd meeting (fifty-second session) on 2 November 1994.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee is aware that Tunisia is in a period of economic, political and social transition and that it has to face the challenge of extremist movements.

C. Positive aspects

5. The Committee notes with satisfaction the attempt to build a comprehensive constitutional and legal framework for the promotion and protection on human rights. The Committee welcomes recent progress in enhancing and strengthening that framework, notably the establishment of a number of human rights posts, offices and units within the executive branch with a view to ensuring greater conformity of Tunisian law and practice with the Covenant and other international human rights instruments.

6. The Committee also notes with satisfaction recent legislative reforms aimed at bringing Tunisian law into closer harmony with the requirements of the Covenant. In this connection, the Committee welcomes changes in the Penal Code which have reduced the duration of preventive detention, and strengthened sanctions in cases of family violence directed against women. The Committee also welcomes recent reforms in the Personal Status Code and other laws aiming to guarantee and reinforce the equal rights of women in a number of areas, including divorce, custody and maintenance and to strengthen the protection of women against violence.

D. Principal subjects of concern

7. The Committee cannot conceal its disappointment with the deterioration in the protection of human rights in Tunisia in the period under review. It is concerned, in particular, with the growing gap between law and actual practice with regard to guarantees and safeguards for the protection of human rights. Although there is now in place an impressive array of State organs for the promotion and protection of human rights at various levels, the Committee notes that they have been concentrated exclusively within the executive branch of the Government. Consequently, it is not clear whether there are sufficiently independent mechanisms within the public administration and the judiciary to effectively monitor and enforce the implementation of existing human rights standards, including the investigation of abuses.

8. The Committee is particularly concerned with continuing reports of the abuse, ill-treatment and torture of detainees, including deaths in custody under suspicious circumstances. In this connection, it appears that Tunisian regulations are not strictly adhered to with respect to the prompt registration of persons arrested, the immediate notification to family members, the limitation of pre-trial detention to the 10-day maximum, the requirement of medical examinations whenever allegations of torture or other abuse and the carrying out of autopsies in all cases of death in custody. It is also not clear whether these and other requirements are being systematically monitored and whether investigations are automatically undertaken in all cases where there are either allegations or suspicious circumstances indicating that torture may have taken place. The Committee is also concerned that present laws overly protect Government officials, particularly those concerned with security matters; it is particularly concerned that those government officials who have been found guilty of wrong-doing remain anonymous to the general public, becoming immune from effective scrutiny.

9. The Committee is concerned about the independence of the judiciary. It is also concerned by the reports on harassment of lawyers who have represented clients accused of having committed political offences and of the wives and

families of suspects. With respect to article 6 of the Covenant, the Committee is concerned over the large number of crimes in Tunisia for which the death penalty may be imposed.

10. The Committee is concerned that, despite the significant progress which has been achieved regarding the equal rights of women, there remain a number of outdated legal provisions that are contrary to the Covenant. Those provisions concern the status of married women and their equal rights in matters of child custody, the transmission of nationality and parental consent for the marriage of minor children. The Committee is also concerned with legal discrimination against non-Muslims with respect to eligibility for public office.

11. The Committee is concerned that dissent and criticism of the Government are not fully tolerated in Tunisia and that, as a result, a number of fundamental freedoms guaranteed by the Covenant are not fully enjoyed in practice. In particular, it regrets the ban on the publication of certain foreign newspapers. The Committee is concerned that those sections of the Press Code dealing with defamation, insult and false information unduly limit the exercise of freedom of opinion and expression as provided for under article 19 of the Covenant. In this connection, the Committee is concerned that those offences carry particularly severe penalties when criticism is directed against official bodies as well as the army or the administration, a situation which inevitably results in self-censorship by the media when reporting on public affairs. The Committee also notes with concern that it is not clear how procedures ensure independent review on the merits, including judicial appeal, in cases where those provisions of the Press Code have been invoked.

12. The Committee is concerned that the Associations Act may seriously undermine the enjoyment of the freedom of association under article 22, particularly with respect to the independence of human rights non-governmental organizations. In this connection, the Committee notes that the act has already had an adverse impact on the Tunisian League for Human Rights. The Committee believes that the Political Parties Act and the conditions imposed on the activities of political parties, do not appear to be in conformity with articles 22 and 25 of the Covenant. The Committee is also concerned that, under the Passport Act, the grounds for refusing a passport are not clearly specified by law in a way that complies with article 12 of the Covenant, leaving open the possibility of refusal on political or other unacceptable grounds.

13. The Committee is concerned that, while generally there is a well protected freedom to practice and manifest one's religion, this right is not made available in respect of all beliefs.

E. Suggestions and recommendations

14. The Committee recommends that steps be taken to strengthen the independence of human rights institutions in Tunisia and thereby close the gap between law and practice and enhance the confidence of the public in those institutions. The Committee emphasizes that the work of the "médiateur administratif", the Presidential Human Rights Commissioner and any commission investigating reports of human rights abuses should be transparent and the results should be made public. The Committee notes that a better balance is needed between State and private institutions concerned with human rights and, in that connection, suggests that steps be taken to provide more encouragement to human rights non-governmental organizations in Tunisia. The Committee also recommends that steps are taken to strengthen the independence of the judiciary, particularly from the executive branch.

15. The Committee strongly recommends that the State party consider ratifying or acceding to the first Optional Protocol to the International

Covenant on Civil and Political Rights. Acceptance of the first Optional Protocol would strengthen the capacity of the Government with respect to inquiries into allegations of human rights abuses and also in regard to further elaborating jurisprudence relating to human rights matters.

16. With respect to reports of torture and abuse of detainees, the Committee strongly recommends closer monitoring of the arrest and detention process; systematic, prompt and open investigation into allegations; prosecution and punishment of offenders; and the provision of legal remedies for victims. There should be strict enforcement of registration procedures, including prompt notification of family members of persons taken into custody, and the 10-day limit to preventive detention. Steps should also be taken to ensure that medical examinations are automatically provided following allegations of abuse and that thorough autopsies are performed following any death in custody. In all cases where investigations are undertaken, the findings should be made public.

17. The Committee also recommends that the State party take steps to reduce the number of crimes for which the death penalty may be imposed and envisage acceding to the Second Optional Protocol to the Covenant.

18. With respect to discrimination, the Committee recommends that a further review of relevant legislation be undertaken with a view to amending the law where necessary in order to bring it into conformity with the requirements of the Covenant. Such a review should focus on the equal rights of women, particularly in regard to their parental and custodial rights and the transmission of nationality, as well as on existing legal impediments to the equal participation of non-Muslims in Presidential elections.

19. The Committee recommends that measures be taken to ensure the exercise of the freedom of opinion and expression in accordance with article 19 of the Covenant. In particular, there should be a review and, where appropriate, amendment of those provisions of the Press Code which unduly protect Government policy and officials from criticism. Provision should also be made for independent judicial review of all sanctions imposed under the act.

20. The Committee also recommends that a review be undertaken of the Associations Act, the Passport Act and the Political Parties Act to ensure that they are in full conformity with the requirements of the Covenant. With respect to freedom of religion, the Committee recommends that there be close and independent monitoring of the exercise of that right by all groups in Tunisia. The Committee emphasizes that its General Comment on article 18 should be reflected in Government policy and practice.